BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION

In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition	**Docket No.: 45045**

SANDERSVILLE RAILROAD COMPANY'S
OBJECTIONS TO PRE-FILED RESPONSIVE TESTIMONY

Sandersville Railroad Company ("Sandersville Railroad"), a corporation owning and operating a railroad in the State of Georgia, files its Objections to Pre-Filed Responsive Testimony (this "Objection") of respondents and intervenors in the above-styled docket.

(I) Background

On March 8, 2023, Sandersville Railroad filed a Petition for Approval to Acquire Real Estate by Condemnation with the Georgia Public Service Commission. Sandersville Railroad seeks to acquire right of way for a 4.5 mile spur connecting the CSXT rail line that runs along State Route Highway 16 in Hancock County to the Hanson Quarry. Landowners, neighbors, and an ad hoc No Railroad in Our Community Coalition (the "Coalition")[1] intervened to oppose the condemnation.

On March 24, 2023, a hearing officer (the "Hearing Officer") was assigned and

[1] This ad-hoc coalition purportedly consists of Melanie Benson, Bennie Clayton, Eloise Clayton, Kenneth Clayton, David Mark Smith, Janet P. Smith, Betty Lamar, James Lamar, and Elizabeth Scott. Verified Application for Leave to Intervene of the No Railroad in Our Community Coalition*, In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 204880 (June 21, 2023).

on May 18, 2023, a Procedural and Scheduling Order and Notice of Hearing (the "PSO") was entered, and there after amended, requiring (1) Sandersville Railroad to pre-file direct testimony; (2) other parties to file responsive testimony; and (3) Sandersville Railroad to pre-file rebuttal testimony.

On July 21, 2023, Sandersville Railroad pre-filed direct testimony of various witnesses. On August 25, 2023, the Respondents pre-filed responsive testimony of the following individuals (collectively, the "Respondents' Testimony"):

(1) Leo Briggs (a Respondent);[2]

(2) Donald J. Kochan;[3]

(3) Thomas Ahmad Lee (a Respondent);[4]

(4) Donald Garrett, Sr. (a Respondent);[5]

(5) Mr. Gary Hunter;[6]

(6) Joel Bradford Reed (a Respondent);[7]

(7) Marvin Smith, Jr. (a Respondent);[8]

---

[2] Pre-Filed Testimony of Leo Briggs, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205547 (Aug. 25, 2023).

[3] Pre-Filed Responsive [] Testimony of Donald J. Kochan, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205548 (Aug. 25, 2023).

[4] Pre-Filed Responsive Testimony of Thomas Ahmad Lee., *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205544 (Aug. 25, 2023).

[5] Pre-Filed Responsive Testimony of Donald Garrett, Sr., *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205546 (Aug. 25, 2023), as supplemented by Supplemental Exhibit M to Pre-Filed Responsive Testimony of Donald Garrett, Sr., *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205663 (Sept. 11, 2023).

[6] Pre-Filed Responsive [] Testimony of Gary Hunter, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205550 (Aug. 25, 2023).

[7] Pre Pre-Filed Responsive Testimony of Joel Bradford Reed, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205543 (Aug. 25, 2023).

[8] Pre-Filed Responsive Testimony of Marvin Smith, Jr., *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205542 (Aug. 25, 2023).

(8) William Blaine Smith (a Respondent);[9] and

(9) Sally G. Wells (a Respondent);[10]

Also on August 25, 2023, the Ogeechee Riverkeeper (the "Riverkeeper") filed its "Notification of Ogeechee Riverkeeper's Request to Make a Non-Party Limited Appearance by Means of Written Statement," (the "Riverkeeper Testimony") which is essentially the pre-filed direct testimony of the Executive Director of the Riverkeeper, Mr. Damon Mullis.[11] Despite the extensive and unsubstantiated factual and legal arguments contained in the Riverkeeper Testimony, the Ogeechee Riverkeeper did not timely or otherwise file an application to intervene in this docket. Therefore, the Riverkeeper's Testimony should not be admitted and, since the Riverkeeper did not timely file an application to intervene, the Riverkeeper should be directed to make his comments prior to the open of the evidentiary record at the hearing on this matter, as is the pattern, practice, and policy of the Commission for public witnesses.

On August 28, 2023, the ad-hoc Coalition pre-filed the "Direct Testimony [sic] of Conner Bailey, Bennie Clayton, Commissioner Randolph Clayton, Elizabeth Scott, Janet Smith, Kenneth Clayton, Mark Smith, [and] Melanie Benson," (the "Coalition Members' Testimony")[12] as one consolidated filing consisting of the separate, non-panel

---

[9] Pre-Filed Responsive Testimony of William Blaine Smith, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205545 (Aug. 25, 2023).
[10] Pre-Filed Responsive Testimony of Sally G. Wells, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205549 (Aug. 25, 2023).
[11] Notification of Ogeechee Riverkeeper's Request to Make a Non-Party Limited Appearance by Means of Written Statement, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205552 (Aug. 25, 2023).
[12] Direct Testimony [sic] of Conner Bailey, Bennie Clayton, Commissioner Randolph Clayton, Elizabeth Scott, Janet Smith, Kenneth Clayton, Mark Smith, [and] Melanie Benson, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205553 (Aug. 28, 2023).

testimonies of the 8 above-named individuals, none of whom own project parcels. Then, on August 30, 2023, the Coalition filed the "Pre-Filed Responsive [] Testimony of Dr. Erica Walker" ("Dr. Walker's Testimony" and, collectively with the Coalition Members' Testimony, the "Coalition's Testimony").[13]

On September 28, 2023, Sandersville Railroad pre-filed rebuttal testimony of certain individuals.

This Objection makes to the Hearing Officer Sandersville Railroad's objections to the pre-filed testimonies of the Respondents, the Riverkeeper, and the Coalition.

(II) Argument

The issue in this proceeding is "**whether the condemnation serves a public purpose [i.e., use], not whether the condemnation 'best serves' the public interest**."[14] "If the purpose of the Commission's review was to determine the best site for railroad expansion, then the review should logically cover expansion on land acquired by the railroad through gift and purchase as well as condemnation. The review does not extend to such expansion . . . . **[T]he review is intended to provide scrutiny as to the public or private nature of the use of the land involved.**"[15] For example, in *Central of Georgia Railroad v. Georgia Public Service Commission*,[16] the Georgia Supreme Court concurred with the trial court's findings that the

---

[13] Pre-Filed Responsive [] Testimony of Dr. Erica Walker, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205581 (Aug. 30, 2023).
[14] E.g., *Central of Georgia Railroad v. Georgia Public Service Commission*, 257 Ga. 217, 219, 356 S.E.2d 865, 866 (1987) (emphasis added)
[15] *Id.* (emphasis added).
[16] 257 Ga. 217, 356 S.E.2d 865 (1987).

Commission erred in denying a condemnation "based on [the Commission's] . . . determination that 'the public interest [was not] best served by the condemnation of [that] particular piece of property.'"[17] Additionally, Georgia law irrefutably states that **"[t]he opening of roads . . . or the providing of channels of trade or travel" is a "public use."**[18]

Regarding a railroad's request to condemn property for a new track, this inquiry involves a determination of whether the track is "necessary for the proper accommodation of the business of the company."[19]

Much of the testimony of the Respondents, the Riverkeeper, and the Intervenors addresses myriad issues other than "whether the condemnation serves a public purpose" by, for instance, "providing . . . channels of trade or travel."[20] Instead, much of the testimony of the Respondents, the Riverkeeper, and Intervenors seeks or purports to address whether the Hanson Spur, in their myopic view, "'best serves' the public interest."[21]

---

[17] *Id.* at 257 Ga. at 217, 356 S.E.2d at 865 (quoting an uncited Commission order).
[18] O.C.G.A. § 22-1-1(9)(A)(iii).
[19] O.C.G.A. § 46-8-120(a)(4); O.C.G.A. § 46-8-121. **Additionally, the Georgia General Assembly has long acknowledged that right of way for a railroad to serve quarry is a public purpose.** O.C.G.A. § 44-9-70 ("any person, firm, corporation, [or] company of persons . . . engaged in the business of mining [or] . . . quarrying . . . granite . . . [or among other things] . . . and who needs a right of way for a railroad . . . [or other things] in order to operate his business successfully may obtain a right of way" by condemnation.
[20] *Central of Georgia Railroad*, 257 Ga. at 219, 356 S.E.2d at 866; O.C.G.A. § 22-1-1.
[21] *Central of Georgia Railroad*, 257 Ga. at 219, 356 S.E.2d at 866.

(A) Grounds for Exclusion of Testimony

(i) Testimony on the ultimate issue — whether the Hanson Spur serves a public use — and testimony construing the substance of the ultimate issue must be excluded.

The purpose of expert testimony is to inform the trier of fact of "scientific, technical, or other specialized knowledge" of an expert, to help the trier of fact understand complicated evidence that relies on "facts or data," and help to explain the "reliable principles and methods" an expert used to obtain that evidence and knowledge.[22] Expert testimony may not be admitted if it argues legal issues, such as the proper interpretation and understanding of a statute or constitutional provision. The Court of Appeals of Georgia has ruled that the conclusions of an expert witness are "not admissible on the ultimate [legal] issue[s]," such as a defendant's negligence.[23] For example and most recently, in *Fireman's Fund Insurance Company v. Holder Construction Group, LLC*,[24] the Court of Appeals of Georgia noted that "[a]n expert witness may not testify as to his opinion regarding ultimate legal conclusions, but may testify to an ultimate issue of fact," and excluded a legal expert's opinion regarding the reasonable level of care of a contractor.[25] The same is true for lay witnesses.[26]

In other words, the fact finder and only the fact finder "is responsible for

---

[22] O.C.G.A. § 24-7-702(b).
[23] *E.g.*, *Daimler-Chrysler Motors Company, LLC v. Clement*, 294 Ga. App. 38, 668 S.E.2d 737 (2008); *Sullivan v. Quisc, Inc*., 207 Ga. App. 114, 115 (1993).
[24] 362 Ga. App. 367, 888 S.E.2d 485 (2022).
[25] *Fireman's Fund Insurance Company,* 362 Ga. App. at 374, 888 S.E.2d at 491 (internal quotations omitted). "Courts [and the Commission] must remain vigilant against the admission of legal conclusions, and an expert witness may not substitute for the court in charging the [factfinder] regarding the applicable law." *Cook ex rel. Estate of Tessier v. Sheriff of Monroe county, Fla.*, 402 F.3d 1092, 1112 n. 8 (11th Cir. 2005) (quoting *U.S. v. Milton*, 555 F.2d 1198, 1203 (5th Cir. 1977)).
[26] *Janney v. Dugger*, 86 Ga. App. 414, 416, 71 S.E.2d 777, 779 (1952); O.C.G.A. § 24-7-701(a).

evaluating the evidence and drawing conclusions of law and fact. It is neither necessary nor desirable for a witness to play the thirteenth juror, testifying as to how he or she would decide the case."[27]

(ii) Purported expert testimony that does not satisfy Georgia Rule of Evidence 702 must be excluded.

Admission of expert testimony "is a question committed to the sound discretion of the trial court."[28] In reviewing expert testimony, "the trial court acts as a gatekeeper, assessing both the witness' qualifications to testify in a particular area of expertise and the relevancy and reliability of the proffered testimony."[29]

A witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise, if:

(1) The expert's scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine **a fact in issue**;

(2) The testimony is based upon sufficient facts or data;

(3) The testimony is the product of **reliable principles and methods**; and

(4) The witness has applied the principles and methods reliably to the facts of the case which have been or will be admitted into evidence

---

[27] Milich, Paul S., *Georgia Rules of Evidence*, § 15:1, p. 478-88 (2022-2023 Edition). Witness opinion testimony "about a nontechnical subject which [is] not beyond the purview of the" fact finder is inadmissible under Federal Rule of Evidence 701 because **the fact finder is "perfectly capable of drawing its own independent conclusion based on the evidence presented.**" *U.S. v. Frazier*, 387 F.3d 1244, 1262-63 (11th Cir. 2004) (emphasis added).

[28] *Scapa Dryer Fabrics v. Knight*, 299 Ga. 286, 289, 788 S.E.2d 421, 424 (2016).

[29] *HNTB Ga., Inc. v. Hamilton-King*, 287 Ga. 641, 642, 697 S.E.2d 770 (2010).

before the trier of fact.[30]

Any flaw that makes a purported expert's testimony unreliable in any respect "renders the expert's testimony inadmissible."[31]

Pursuant to OCGA. § 24-7-702, an expert must demonstrate that, based on her demonstrated experience and/or education in a particular field, she has developed a professional opinion based upon sufficient facts.[32] The expert's opinion must be based on principles, methods, or techniques of proven reliability."[33]

Although Georgia Rule of Evidence 702 may be less strictly applied in proceedings under the Georgia Administrative Procedure Act,[34] the policies behind that rule are a sound basis for determining whether to exclude testimony.

(iii) Testimony of Persons Not Subject to Cross Examination must be excluded.

It is the duty of a judicial body "to allow a searching and skillful test of a witness's "intelligence, memory, accuracy, and veracity."[35] In fact, cross-examination is a substantial right, essential to the proper administration of justice, which extends to all matters that are material to the controversy that are within the knowledge of the witness."[36] Georgia law permits, in a proceeding before the Commission, "[a] person

---

[30] O.C.G.A. § 24-7-702(b) (2017) (emphasis added).
[31] *McClain v. Metabolife Int'l, Inc.,* 401 F.3d 1233, 1244 (11th Cir. 2005).
[32] *Mason v. Home Depot USA, Inc*., 283 Ga. 271, 279 (2008) (expert testimony based solely on personal experience and opinion properly excluded); accord, *Brady v. Elevator Specialists, Inc.,* 287 Ga. App. 304, 307 (2007) (lack of basis for causal link warranted exclusion of expert testimony).
[33] *E.g.*, *Martinez-Arias v. State*, 313 Ga. 276, 869 S.E.2d 501 (2022); *Kilgore v. Gold Kist, Inc.*, 224 Ga. App. 394, 480 S.E.2d 391 (1997) (excluded expert testimony on the results of certain experiments the expert conducted because the test was not substantially similar to the facts giving rise to the matter).
[34] O.C.G.A. § 50-13-1, *et seq.*; O.C.G.A. § 24-7-702(g)
[35] *E.g.*, *Harris v. Central Railroad*, 78 Ga. 525, 534, 3 S.E. 255 (1887).
[36] *Id.*

who is not a party [to] make a limited appearance by making an oral or written statement of his position on the issues within such limits and on such conditions as may be fixed by the hearing officer; but he may not otherwise participate in the proceeding."[37] That said, the

> Commission [and the Hearing Officer] maintain[] the discretion to disallow a person from making or continuing to make an oral or written statement if such disallowance is consistent with principles of fairness and necessary to maintain decorum, based on factors, including but not limited to:
>
> > (1) whether the oral or written statement is limited to and rationally related to the issues noticed for consideration at the hearing;
> > (2) whether the oral statement is redundant to the oral statements made by other persons so as to unduly delay the hearing;
> > (3) whether the person making the oral or written statement is speaking on behalf of a party to the proceeding; and
> > (4) whether the person making the oral or written statement is conducting him or herself in a disruptive, offensive, or defamatory manner.[38]

The Commission also has the "ability to impose procedural requirements on the presentation of written and oral comments in order to effectively manage the proceeding."[39] Historically, the Commission has done so by limiting such non-party, public comments to being stated off the record at the commencement of the hearing and to limit such comments to 2 minutes per person. This is done to ensure and sustain "principles of fairness and . . . to maintain decorum."[40]

(iv) Testimony that is not relevant must be excluded

Relevant evidence is that which has "any tendency to make the existence of any

---

[37] O.C.G.A. § 46-2-59(g).
[38] Ga. Comp. R. & Regs. 515-2-1-.06(4)(a).
[39] Ga. Comp. R. & Regs. 515-2-1-.06(4)(b).
[40] Ga. Comp. R. & Regs. 515-2-1-.06(4)(a).

fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."[41] In other words, relevant evidence must tend to prove or disprove a material fact which is at issue in the case.[42]

Evidence is excluded under Georgia Rule of Evidence 403 when "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence."[43]

The only material facts in this matter are those tending to prove whether the Hanson Spur will or will not provide a public use on the properties of Respondents that Sandersville Railroad seeks to acquire or is or is not necessary to the proper accommodation of Sandersville Railroad's business.[44] Testimony regarding the tertiary effects of the Hanson Spur, especially unsubstantiated testimony, does not address whether the Hanson Spur will serve a public purpose. Instead, such testimony addresses whether the Hanson Spur, in the sole opinion of the witness, would "best serve" their view of a public purpose. Such testimony has no probative value. As the Georgia Supreme Court has made clear that is not the test; only testimony regarding whether the Hanson Spur will serve a public use is relevant in this proceeding.[45]

Sandersville Railroad acknowledges that many of the Respondents and

---

[41] O.C.G.A. § 24-4-401.
[42] *Chambers v. Gwinnett Community Hospital*, 253 Ga. App. 25, 29, 557 S.E.2d 412, 417 (2001) (quoting *Department of Transportation v. Delta Machine Products Company*, 157 Ga. App. 423, 426, 278 s.E.2d 73 (1981).
[43] O.C.G.A. § 24-4-403.
[44] *E.g.*, O.C.G.A. § 22-1-1(9)(A).
[45] *Central of Georgia Railroad v. Georgia Public Service Commission*, 257 Ga. 217, 219, 356 S.E.2d 865, 866 (Ga. 1987).

Intervenors have opinions regarding the effect that the Hanson Spur will have on the value of their property. With respect to the Respondents, who own Project Parcels, those opinions of value will be relevant in the Superior Court of Hancock County during trials on what is just and adequate compensation for the Project Parcel(s) acquired in each such proceeding.[46] But, they are not relevant in this proceeding which looks to whether or not the Hanson Spur on the Project Parcels at issue (and nowhere else) will serve a public or private use.

(v) Testimony that is hearsay or based on facts not in evidence must be excluded.

Hearsay—which is "a statement, other than one made by the declarant while testifying at the . . . hearing, offered in evidence to prove the truth of the matter asserted"—is inadmissible, absent applicable exception.[47] Even if a witness does not expressly state another person's out-of-court statement, if the witness's testimony is based on what a witness was told by someone else, that testimony is implicit hearsay and inadmissible.[48]

Similarly, "[a]n expert is not permitted to give [an] . . . opinion based on facts not in evidence or upon erroneously assumed facts."[49] And, "[a]n attorney may not argue facts that are not in evidence . . . ."[50]

---

[46]

[47] O.C.G.A. §§ 24-8-801(c)-(d), 24-802.

[48] *Belans v. Bank of Amercia,* 303 Ga. S.E.2d 416 (1999).

[49] *E.g.*, *Biggs v. McDougall*, 175 Ga. App. 87, 88, 332 S.E.2d 381, 382 (1985).

[50] *E.g.*, *Seaboard C. L. R. Co. v. Duncan*, 123 Ga. App. 479, 481, 181 S.E.2d 535, 538 (1971); O.C.G.A. § 9-10-185.

(B) The Testimony That Must be Excluded

(i) The testimony of Donald J. Kochan,[51] Witness for the Respondents, must be excluded as testimony regarding the ultimate issue and as otherwise not qualifying as expert testimony.

Inadmissible testimony regarding the ultimate issue. Donald J. Kochan is a Professor of Law and Executive Director of the Law & Economics Center at George Mason University Antonin Scalia Law School where he teaches Property Law and spends a significant portion of his time studying takings law, particularly public use.[52] His pre-filed testimony focuses entirely on whether Sandersville's use of the land to build the spur would qualify as "public use."[53] Specifically, Professor Kochan states that his "testimony addresses the historic and linguistic understanding of the term 'public use' as that term is used regarding the exercise of eminent domain . . . . [I]t is . . . clear that a taking primarily to benefit a single entity or a small network of entities—such as here a single customer and its network—would not fit as a 'public use' or for 'public purposes,' even if some secondary users (but still far from a large segment of the public) might also gain benefits from using, or receiving products from users of, the condemned property."[54]

The determination of the "public use" of the project is the only determination to

---

[51] Pre-Filed Responsive [] Testimony of Donald J. Kochan, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205548 (Aug. 25, 2023).
[52] *See id.* at 2.
[53] *See id.*
[54] *Id.*

be made by the Commission in this proceeding.[55] This sole determination to be made by the Commission is this proceeding is what the parties will argue in briefs (and oral argument, if requested or permitted by the Hearing Officer) after the close of the evidentiary record; this issue is based on the evidence, it is not a fact to which witnesses can testify.

Sandersville does not dispute Mr. Kochan's professorial credentials or that he has published scholarly work on takings and public use. Sandersville contends that Mr. Kochan's testimony is not a permissible means by which a party may present legal analysis. Mr. Kochan's testimony discusses "drafting and early interpretational history," "linguistic lessons," "the purposes and function" of takings clauses, and the application "of interest group theory."[56] Legal analysis should be reserved for post-hearing briefing, not inserted into pre-filed expert testimony.

Mr. Kochan's testimony attempting to usurp the authority of the Hearing Officer to determine the ultimate issue in this matter is tantamount to a post-hearing brief on the ultimate issue—although his "testimony" makes little mention or analysis of Georgia law.[57] To the extent he is otherwise purporting to testifying as to facts regarding the ultimate issue, his testimony is not admissible.

---

[55] *Cent. of Georgia R.R. v. Georgia Pub. Serv. Comm'n*, 257 Ga. 217, 218 (1987) ("The Commission, in ruling on the propriety of a condemnation of property by a railroad for the purpose of expansion and improvement, should seek to determine whether the condemnation serves a public purpose, not whether the condemnation 'best serves' the public interest."); GA. COMP. R. & REGS. 515-16-16-.03 ("If the Commission ultimately determines such condemnation to serve a public purpose, it shall issue a final order approving any condemnation petition by a railroad company").

[56] Pre-Filed Responsive [] Testimony of Donald J. Kochan, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205548, pp. 10-11.

[57] *See generally id.*

Based on the law enunciated by the Court in *Fireman's Fund Insurance Company v. Holder Construction Group, LLC*,[58] the Hearing Officer here should not admit Mr. Kochan's testimony regarding the "ultimate legal conclusion": whether the proposed railroad spur will serve a public purpose.

Inadmissible testimony not within the witness' qualifications.

Under Georgia Rule of Evidence 702, an expert's testimony is only admissible if, among other things, "the expert's . . . specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue," the "testimony is the product of reliable principles and methods," and "the witness has applied the principles and methods reliably to the facts of the case which have been or will be admitted into evidence before the trier of fact."

To the extent Mr. Kochan is contending that his testimony is directed at public use as a matter of fact, as opposed to inadmissible testimony regarding the legal principal at issue,[59] it must be excluded because he has no qualifications to testify as an expert in what, in fact, constitutes a public use of rail transportation.[60] Additionally, Mr. Kochan does not demonstrate or even discuss how his is the subject of reliable principles and methods, as opposed to his own legal pontification. For these reason, the testimony of Mr. Kochan should not be admitted.

---

[58] 362 Ga. App. 367, 888 S.E.2d 485 (2022).
[59] Pre-Filed Responsive [] Testimony of Donald J. Kochan, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205548, at p. 26, l. 5 to p. 28, l. 5.
[60] *E.g.*, *id*. at p. 2, l. 6 to p. 7, l. 18.

(ii) The testimony of Dr. Conner Bailey, Witness for the Coalition, must be excluded as testimony regarding the ultimate issue, as otherwise not qualifying as expert testimony, and as otherwise not relevant.

Inadmissible testimony regarding the ultimate issue.

Dr. Conner Bailey's testimony[61] focuses on weighing his opinion of public benefits versus alleged public harms of the Hanson Spur.[62] He thereby addresses the legal conclusion of whether the Hanson Spur serves a public purpose. Specifically, on page 11, line 15 through page 14, line 13, Dr. Bailey at length answers the question "is the proposed taking of property through eminent domain justified by furtherance of the public good or is it primarily a question of private gain?" His testimony does not address the test long-ago announced by the Georgia Supreme Court in *Central of Georgia Railroad* of whether the Hanson Spur will serve a public purpose within the meaning of O.C.G.A. § 22-1-1 on the Project Parcels at issue in this proceeding. To the extent that testimony is an opinion on the ultimate legal issue, it must be excluded.

Inadmissible testimony not within witness' qualifications. Expert testimony is admissible when the testimony based on the expertise of the witness would "assist the trier of fact to understand the evidence or to determine a fact in issue."[63] Dr. Conner Bailey's pre-filed testimony[64] states that he is a sociologist and has experience in rural

---

[61] Direct Testimony [sic] of Conner Bailey, Bennie Clayton, Commissioner Randolph Clayton, Elizabeth Scott, Janet Smith, Kenneth Clayton, Mark Smith, [and] Melanie Benson, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205553, Direct Testimony of Conner Bailey (Aug. 28, 2023).
[62] *See generally id*.
[63] O.C.G.A. § 24-7-702.
[64] Direct Testimony [sic] of Conner Bailey, Bennie Clayton, Commissioner Randolph Clayton, Elizabeth Scott, Janet Smith, Kenneth Clayton, Mark Smith, [and] Melanie Benson, *In re: Sandersville Railroad*

sociology, and his entire career has been devoted to sociological work.[65]

To the extent he is testifying on the ultimate legal issue his testimony is inadmissible not only because the content is inadmissible but because he has no legal expertise.

To the extent he is testifying as to whether the facts support the proposition that the Hanson Spur serves a public use, he is also not qualified. The question before the Hearing Officer is not about sociology. It is about rail transportation. Dr. Bailey has no expertise in any matter that would relate to whether the Hanson Spur serves a public purpose. He has no degree or any experience in business or railroading or any related field. Therefore, Dr. Bailey's testimony fails to satisfy the test for admission under Georgia Rule of Evidence 702.

Testimony that is inadmissible because it is not relevant. Dr. Bailey's testimony is not relevant because he discusses his opinion on issues regarding (a) "what companies stand to benefit from" the Hanson Spur, and (b) the effect of the Hanson Spur on nearby parcels and residents. That is clearly aimed at whether the Hanson Spur "best serves" the segment of the public on behalf of which he is testifying. Therefore, even if Dr. Bailey were an expert on the public use of rail transportation, he simply does not address in any way whether the Hanson Spur would serve a public purpose by establishing channels of trade or travel. His testimony about whether the Hanson Spur "best serves" a public use addresses a question not before the Commission

---

Company; Hancock County, Georgia Acquisition, Docket 45045, Document 205553, "Direct Testimony of Conner Bailey" (Aug. 28, 2023).

[65] *Id.* p. 2, l. 13 to p. 3, l. 18.

is not relevant and inadmissible.

(iii) The testimony of Gary Hunter, Witness for the Respondents, must be excluded as testimony regarding the ultimate issue and otherwise not qualifying as expert testimony.

Inadmissible testimony regarding the ultimate issue. Much of Mr. Hunter's testimony is directed at the ultimate legal issue in this proceeding: the meaning of the law set forth in the Georgia Constitution and the governing statutes. Because Mr. Hunter often conflates fact and law to make his testimony appear admissible, Sandersville Railroad shows here the many ways in which he is not testifying properly as to facts or opinions within his expertise as a railroad consultant but is expressing inadmissible opinions on the ultimate issue.

In this regard, Mr. Hunter's frequently testifies as to the ultimate issue in an effort to define that issue directly or implicitly by assumption. The following testimony should be excluded for that reason alone. All references are to the page and line numbers of Mr. Hunter's testimony ("Test.") and exhibits ("Ex.")

Test., p. 3; l. 21-23. Mr. Hunter here asserts that he has been asked to testify about the economic feasibility of the Hanson Spur project. In so doing, he is implicitly assuming, and therefore advocating an ultimate legal requirement that is nowhere explained, even in the legal opinions he expresses elsewhere in his testimony. He repeatedly returns to this assumption.[66] As a result, his testimony as to feasibility is testimony regarding an ultimate conclusion of fact and law and such testimony should be excluded.

---

[66] *See* Test. p. 5, l. 11-13; Test. p. 9, l. 20-21; Test. p. 10, l. 1-2; Test. p. 20, l. 17-19.

Test. p.6, l. 22-23. "Property should not be condemned for a project about which Sandersville, and everyone else, seems to know so little." This statement is about an ultimate legal conclusion and inadmissible.

Test. p. 6, l. 17 – p. 9, l. 11. The entirety of Mr. Hunter's testimony should be stricken because it assumes and opines on what Intervenors would like to be the ultimate legal standard – that a railroad otherwise complying with the law of condemnation must also meet new criteria proposed by Mr. Hunter but is nowhere expressed in that law. In this respect, because almost all of Mr. Hunter's testimony is designed to set up a nonexistent legal standard and then criticize Sandersville for not meeting that standard, it should all not be admitted absent a showing by the Respondents that Mr. Hunter's standard accurately reflects existing legal authority and not merely Mr. Hunter's imagination or Mr. Kochan's proposals to change the law.

Test. p. 9., l. 24 – p. 10, l. 7. In this section of Mr. Hunter's testimony, he again asserts that condemnation requested should be denied because Sandersville railroad is not "feasible." This testimony and all like testimony as to the nature and Sandersville Railroad's satisfaction of the ultimate legal standard is inadmissible. Mr. Hunter could have testified simply that, in his view, the Hanson Spur would not be a good investment. Even then, because investability is also not a legal standard here, that evidence would not be relevant and, therefore, not admissible. But, Mr. Hunter's testimony here is beyond the pale and abusive because he is consistently testifying to the law and an ultimate legal conclusion.

Test. p.12, l. 17-18. "However, this traffic should also be verified to ensure that

Heidelberg actually has a market able to receive all 400,000 tons of unit train traffic." One again, Mr. Hunter purports to assert an ultimate legal requirement – the need to verify the marketing plan of a potential shipper before demonstrating that a railroad spur will serve a public use. Even if he were correct, which he is not, Mr. Hunter's testimony as to what is, and whether a party has met, the ultimate legal standard is inadmissible.

Test. p. 18, l. 4. Mr. Hunter's statement that "Since Georgia does not allow condemnation for economic development purposes," and his subsequent analyses related to that proposition must be stricken as inadmissible because it states an ultimate legal conclusion which, even if correct, would not apply here because this is a private economic development project for which condemnation authority has been granted by Georgia **not because it is an economic development project but because it is a railroad project that serves a public use.**

Test. p. 21, l. 1 to p. 22, l. 6. All of Mr. Hunter's testimony on these lines is inadmissible because it asserts ultimate legal conclusions regarding whether the Hanson Spur meets the standards of Georgia law and must be excluded.

Inadmissible testimony not within the witness's qualifications

As a general matter, all of Mr. Hunter's ultimate legal conclusions noted above and all his assumptions about those legal conclusions and the standards to which they supposedly pertain must be excluded because they are beyond Mr. Hunter's expertise. He is not a lawyer. To the extent he is interpreting the law, as opposed to merely quoting it, he is not qualified to do so. Yet he does so repeatedly – explicitly and

implicitly. All such interpretations belong in the briefs of Respondents' lawyers, not in the testimony of a railroad consultant.

Test. p 10, l. 15-16. "The crossing from the CSX mainline to the N=new railroad will need to be an underpass under the major State Highway 16/Augusta Highway." This testimony should be stricken as having no basis in the witness's expertise and no basis in the facts in evidence.

Test. p.10, l. 20-23. "[T]his is clearly a new railroad construction – not a railroad spur." This is a legal issue under federal law. *See Cedarapids, Inc. v. Chicago, Cent. & Pac. R. Co.*, 265 F. Supp. 2d 1005, 1016 (N.D. Iowa 2003) (holding that the classification of a rail line as a "spur" is within the STB's exclusive jurisdiction.). Mr. Hunter is not qualified to offer a legal opinion. Therefore, that opinion and all his testimony based on that opinion is inadmissible.

Test. p. 12, l. 9 to p. 17, l. 10. The entirety of Mr. Hunter's testimony regarding public benefits, aside from being based on many facts not in evidence, is beyond the scope of his expertise as an expert witness in railroad matters and, therefore, inadmissible. Mr. Hunter is not an expert in public economics, economic development, the quantification of public benefits, and the weighing of, same. And, he has no personal knowledge on which to assess the value of other testimony as to the impacts on the region from the development and operation of the Hanson Spur. All this testimony and like statements elsewhere in his testimony and exhibits should be excluded.

Test. p. 17, l. 12 to p. 19, l. 15. Mr. Hunter's entire testimony regarding the

alternatives available to the region and the potential users of the Hanson Spur is inadmissible because it is beyond his expertise, relies on facts not in the record, is not based on personal knowledge, but is pure speculation and, therefore, cannot qualify as expert opinion.

Test., Ex. 3. The entirety of Mr. Hunter's "feasibility analysis" should not be admitted because Mr. Hunter has not demonstrated expertise to overcome the absence of support for his many conjectures and assumptions that underlie his purported analysis, and he provides no work papers to support his speculation. He supplies costs but shows neither the origin of those costs nor why they are relevant here. He makes product and transport market projections without showing he has made any inquiry to the many factors that govern those markets, much less that he has any such knowledge. He makes assumptions about what Sandersville Railroad must do to be successful that have no basis in fact or analysis.

Test., Ex. 3., p. 3. Mr. Hunter's description of the Spur as a short line railroad is a legal conclusion that he is not qualified to make. Again, that is a legal conclusion under federal law, and he is not a lawyer. As a result, because much of his purported feasibility analysis is based on that premise, it is not acceptable as expert opinion, adding to the reasons why that testimony must be excluded. Ex. 3, p. 7, penultimate paragraph. Mr. Hunter is not qualified to offer testimony on the matters in this paragraph, all of which relate to the contents of federal and state law relating to the duties of carriers and the law governing condemnation. This testimony must be excluded.

Ex. 3, p. 7, penultimate paragraph. Mr. Hunter is not qualified to offer testimony on the matters in this paragraph, all of which relate to the contents law governing condemnation. This testimony must be excluded.

Ex. 3, p. 12, last ¶ - discussion of what is justified to expend funds.

Inadmissible testimony based on hearsay or that otherwise assumes facts not in evidence.

Test. p 19, l. 17 to p. 20, l. 24. Like his Ex. 3, Mr. Hunter's testimony regarding economic feasibility assumes facts not in evidence – as will be shown on Attachment A to this Objection, which disqualifies any opinions based on those assumed facts, and is therefore inadmissible.

Test. p. 5, l. 7. Mr. Hunter states that "this project may require additional funding from other sources." There is no record support for this assertion based fact and is therefore inadmissible.

Test, p. 5, l. 24 to p. 6, l. 2. Mr. Hunter does not testify that he has visited any of the properties at issue in this proceeding, any of the shippers intending to use the Hanson Spur, any of the relevant rail lines of CSXT or Sandersville Railroad, or the offices of either of these railroads, or that he has visited in person any individuals concerned with the Hanson Spur. His only local knowledge appears to be from reports of an employee who visited Sparta but who is not a witness here and took photos that Mr. Hunter included in his testimony but did not identify at all, much less provide identifying meta-data. Therefore, to the extent Mr. Hunter is relying on facts not in evidence, it is hearsay and testimony relying on those facts is inadmissible.

These facts include: Test. p. 6. l. 16 "Sandersville Community Meeting Slides, August 2022." These slides are not in evidence and his testimony regarding any facts alleged to come from those slides, such as that at page 10, line 9 of Mr. Hunter's testimony, therefore, is inadmissible.

Moreover, since Mr. Hunter's entire feasibility assessment (Ex. 3) is based on capital estimates supposedly provided by those slides or on other facts for which no sources are provided, and on the inadmissible legal conclusion that the Hanson Spur will be a short line railroad (which it will not be), it is inadmissible and should be excluded. Mr. Hunter may be an expert in some of these matters, but any opinions rendered must be based on facts of record that are not opinions, and Mr. Hunter's feasibility analysis does not meet that standard.

Test. p.6, l. 22-23. "Property should not be condemned for a project about which Sandersville, and everyone else, seems to know so little." This statement about what Sandersville or others know assumes facts not in evidence and is inadmissible. It is also highly prejudicial.

Test. p 10, l. 15-16. "The crossing from the CSX mainline to the new railroad will need to be an underpass under the major State Highway 16/Augusta Highway." This testimony should be stricken as having no basis in the witness' expertise, and no basis in the facts in evidence.

Commencing with page 10, Mr. Hunter peppers his testimony with facts not in evidence and not of the sort as to which he can opine without such evidence. The

attached pages from his testimony highlight such inadmissible "facts" and so require that all his testimony related to those facts be stricken.

(iv) The testimony of the Ogeechee Riverkeeper should be excluded because the witness is not subject to cross-examination, provides inadmissible testimony on the ultimate issue, and is not qualified to testify on matters bearing on that issue.

Testimony that should be excluded because the witness is not subject to cross-examination.

Here, the Riverkeeper seeks to submit testimony, without intervening and without subjecting himself to cross-examination. That is improper, especially considering that many of his statements are inflammatory, redundant, and appear to be made on behalf of the Respondents and Intervenors.

Therefore, the Hearing Officer should not admit the "written statement" of the Riverkeeper and should require the Riverkeeper to follow the Commission's standard practice with respect to public witnesses and make his written comments in person orally before the commencement of the evidentiary hearing. To do otherwise would deprive Sandersville Railroad of the "substantial right" to cross-examination, which right is "essential to the proper administration of justice."[67]

Inadmissible testimony regarding the ultimate issue

Like many other witnesses in this matter, the Riverkeeper's Testimony addresses the legal issue in this matter: whether the Hanson Spur will serve a public

purpose.[68] That is improper, especially from a witness who attempts to insulate himself from cross-examination. The Riverkeeper's statements on the legal issue in this matter should not be admitted. Additionally, even if it were proper for the Riverkeeper to testify on the ultimate legal issue in this matter, the Riverkeeper is not an attorney and should not be submitting testimony to the Commission which espouses a legal argument.

Inadmissible testimony not within the witness's qualifications

The Riverkeeper's testimony purports to address the environmental and societal impacts that will result from the Hanson Spur. [69] The Riverkeeper does not identify any expertise regarding rail operations or education as a scientific professional with the relevant expertise and experience to opine on the effects of operation of a railroad. The Riverkeeper's testimony is full of conjecture and speculation that is insufficient to permit admission of the testimony. The Riverkeeper's testimony, therefore, should be excluded.

(v) Dr. Erica Walker, Witness for the Coalition.

Inadmissible testimony regarding the ultimate issue

None of the presumptive expert testimony proffered by the Coalition focuses on "**the public or private nature of the use of the land involved."**[70] Instead, the

---

[68] Notification of Ogeechee Riverkeeper's Request to Make a Non-Party Limited Appearance by Means of Written Statement, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205552, pp. 3, § III(A) (Aug. 25, 2023).
[69] Notification of Ogeechee Riverkeeper's Request to Make a Non-Party Limited Appearance by Means of Written Statement, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205552, pp. 6- 13, § II(B) (Aug. 25, 2023).
[70] *Central of Georgia Railroad*, 257 Ga. at 219, 356 S.E.2d at 866.

Coalition's proffered testimony focuses on whether the Hanson Spur "'best serves'" the Coalition's or its witness's opinion of the "public interest."[71] That is not the test here.

Dr. Erica Walker's pre-filed testimony[72] claims to be a study of the sound that will result from the operation of the Hanson Spur. Dr. Walker's testimony may have been tendered for the purpose of arguing whether the Hanson Spur "best serves" the public interest. It does not address whether the Hanson Spur on the Project Parcels at issue will serve a public purpose within the meaning of O.C.G.A. § 22-1-1. Therefore, for this reason, in addition to her methodology being fundamentally flawed and biased, Dr. Walker's testimony should not be admitted and should be excluded in its entirety.

Inadmissible testimony not within the witness's qualifications.

Expert testimony must be of the sort that can "assist the trier of fact to understand the evidence or to determine a fact in issue."[73] Dr. Erica Walker submitted pre-filed direct testimony regarding the noise that she believes would be generated by the Hanson Spur. The testimony plainly fails the test for admission of expert testimony under Georgia Rule of Evidence 702. First, Dr. Walker's testimony does not address "a fact in issue." The test here is whether the Hanson Spur is a project of the sort the legislature has decided will serve a public purpose on the parcels at issue in this proceeding, it is not whether the Hanson Spur will best serve a public purpose.[74] Second, Dr. Walker's testimony is not based on scientifically verifiable facts or data.

---

[71] *Id.*
[72] Pre-Filed Responsive [] Testimony of Dr. Erica Walker, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205581 (Aug. 28, 2023).
[73] O.C.G.A. § 24-7-702.
[74] *Central of Georgia Railroad*, 257 Ga. at 219, 356 S.E.2d at 866.

Her testimony is void of any substantive discussion of her methodology.

Dr. Walker's testimony discusses only the time and intensity of sound measured. Nothing else is known about the "study" she conducted, apparently in her hometown on the train track with respect to which she has personal animus. She does not present sufficient information in her direct testimony to demonstrate that her "testimony is the product of reliable principles and methods" or that she "applied the principles and methods reliably to the facts of the case."[75] For example, she makes no mention of the type of equipment she used, when it or how it was last calibrated, whether such calibration was performed by the manufacturer, herself, or someone else, the type or size of train measured, or the speed of such train relative to the maximum speed of the locomotive that will operate on the Hanson Spur. For these reasons, Dr. Walker's testimony fails in numerous ways to satisfy the test for admission of expert testimony under Georgia Rule of Evidence 702 and, therefore, should not be admitted.

(vi) Respondent Testimony: All as to relevance

As noted, the issue in this case is whether the Hanson Spur serves a public purpose, not whether it "best serves" a public purpose.[76] That is the sole issue in this matter.[77] Six Respondents pre-filed responsive testimony did not address this issue but instead addressed whether they thought the Hanson Spur "best serves" a public purpose or other issues not relevant here.

---

[75] O.C.G.A. § 24-7-202.
[76] Central of Georgia Railroad
[77]

(1) Leo Briggs (a Respondent)

Mr. Leo Briggs' testimony[78] details his and wife's ownership of,[79] their current and intended future uses of,[80] and the purported "historical significance" of the parent tract of Project Parcel Number 6,[81] whether he desires to sell his property,[82] his knowledge of the Hanson Spur, his history of communications with Sandersville Railroad, and opinion and feelings regarding the same,[83] and purported damage caused by surveyors of Sandersville Railroad to the parent tract of Parcel Number 6 (although Mr. Briggs has never asked the Petitioner to repair or otherwise remedy any such alleged damage or provided to Sandersville Railroad any evidence of the same).[84] None of this testimony addresses the sole issue in this matter: whether the Hanson Spur will serve a public use on the Project Parcels at issue here.

Of most concern, Mr. Briggs testifies regarding his perception of what effects the Hanson Spur will have on his property and his un-defined community, as opposed to the public at large.[85] This testimony is not relevant to whether the Hanson Spur will serve a public purpose, instead it addresses the inapplicable question whether Mr. Briggs believes the Hanson Spur will "best serve" the public. Accordingly, Mr. Briggs' testimony should not be admitted.

---

[78] Pre-Filed Testimony of Leo Briggs, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205547 (Aug. 25, 2023).
[79] *Id.* at p. 2, ll. 18-19.
[80] *Id.* at p. 2, ll. 20-22, p. 3, ll. 3-15, p. 3, ll. 18-23.
[81] *Id.* at p. 3, ll. 1-3.
[82] *Id.* at p. 3, l. 16-17, p. 7, ll. 22 to p. 8, l. 5.
[83] *Id.* at p. 3, l. 24 to p. 6, l. 14, p. 6, l. 23 to p. 7, l. 1; p. 7, ll. 11-15.
[84] *Id.* at p. 6, ll. 1-22.
[85] *Id.* at p. 7, ll. 2-7, p. 7, ll. 16-21.

(2) Donald Garrett, Sr. (a Respondent)

Throughout his responsive testimony,[86] Mr. Donald Garrett addresses many issues regarding the Hanson Spur, but none are germane to the issue at hand: whether the Hanson Spur will serve a public use. Instead, Mr. Garrett's testimony addresses his relationship with the parent tract of Project Parcel 13 and whether the Hanson Spur, in his opinion, will best serve his property and his "community", as opposed to the public at large. Namely, Mr. Garrett's testimony discusses his, his wife's, and his family's ownership history of the parent tract of Project Parcel 13,[87] his present and intended future uses of the property,[88] his feelings regarding that property,[89] his desire to not sell that property,[90] and his knowledge of the Hanson Spur and history of communications with Sandersville Railroad,[91]

Mr. Garrett's testimony also addresses his opinion on how the Hanson Spur will affect his property and life.[92] Additionally, Mr. Garrett addresses his opinion on whether the Hanson Spur will benefit or harm "the Sparta community."[93] None of Mr. Garrett's testimony addresses the issues of whether the Hanson Spur will serve a public purpose on the Project Parcels at issue in this proceeding. For these reasons,

---

[86] Pre-Filed Responsive Testimony of Donald Garrett, Sr., *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205546 (Aug. 25, 2023), as supplemented by Supplemental Exhibit M to Pre-Filed Responsive Testimony of Donald Garrett, Sr., *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205663 (Sept. 11, 2023).
[87] *Id.* at p. 2, l. 13 to. P. 3, l. 9, p. 4, ll. 4-5, p. 4, ll. 13-21.
[88] *Id.* at p. 3, l. 10 to p. 4, l. 3, p. 5, ll. 8-13.
[89] *Id.* at p. 4, ll. 10-12.
[90] *Id.* at p. 5, l. 6-7, p. 14, ll. 10-16.
[91] *Id.* at p. 4, l. 22, p. 5, l. 18 to p. 11, l. 7, p. 12, l. 17 to p. 14, l. 6.
[92] *Id.* at p. 5, ll. 1-5, p. 11, l. 8 to 12, l. 16.
[93] *Id.* at p. 14, ll. 4-9.

Mr. Garrett's testimony is not relevant and should not be admitted.

(3) Thomas Ahmad Lee (a Respondent)

The responsive testimony of Mr. Thomas Ahmad Lee[94] also does not address the sole issue for consideration in this matter. Instead, Mr. Lee testifies regarding issues that are not relevant, such as: his and his families' ownership history of the parent tract of Project Parcel 18 and its meaning to him,[95] his current and intended uses for that property,[96] his desire to not sell the property,[97] his knowledge of the Hanson Spur and history of communications with Sandersville Railroad.[98] Mr. Lee also testifies regarding his belief of the effect of the Hanson Spur on his property and his life.[99] None of this testimony is relevant to whether the Hanson Spur will constitute a public use under Georgia law. Therefore, it should not be admitted.

(4) Joel Bradford Reed (a Respondent)

In his direct testimony,[100] Mr. Joel Bradford Reed discusses no issues relevant to whether the Hanson Spur will serve a public use. Mr. Bradford's testimony, instead, focuses on the following matters: his and his family's ownership history of and feelings regarding the parent tract of Project Parcel 12,[101] his current and intended future uses

---

[94] Pre-Filed Responsive Testimony of Thomas Ahmad Lee., *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205544 (Aug. 25, 2023).
[95] *Id.* at p. 2, l. 20, p. 3, l. 7.
[96] *Id.* at p. 3, ll. 8-15, p. 3, l. 18 to p. 4, l. 7.
[97] *Id.* at p. 3, ll. 16-17, p. 7, l. 22 to p. 8, l. 4.
[98] *Id.* at p. 4, l. 11 to p. 6, l. 9, p. 6, l. 24 to p. 7, l. 15.
[99] *Id.* at p. 6, l. 10 to p. 6, l. 23, p. 7, ll. 16-21.
[100] Pre-Filed Responsive Testimony of Joel Bradford Reed, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205543 (Aug. 25, 2023).
[101] *Id.* at p. 2, ll. 18-23, p. 3, ll. 20-23.

of that property,[102] his desire to not sell the Project Parcel 12,[103] his knowledge of the Hanson Spur and communications with Sandersville Railroad,[104] and alleged damage to Project Parcel 12 caused by Sandersville Railroad's surveyor's (although Mr. Bradford has never notified Sandersville Railroad of such damage or asked that Sandersville Railroad remedy or repair any such alleged damage).[105] Mr. Bradford's testimony also addresses his belief of whether the Hanson Spur best serves the public.[106] However, his testimony does not address whether the Hanson Spur will serve a public purpose.[107] Consequently, Mr. Bradford's testimony should not be admitted.

(5) Marvin Smith, Jr. (a Respondent)

The responsive pre-filed testimony of Marvin Smith, Jr.[108] addresses many issues, but does not address the sole issue in this proceeding: whether the Hanson Spur will serve a public use. Mr. Smith's testimony addresses his, his wife's, and his family's ownership history of the parent tract of Project Parcel 7,[109] his current and intended future uses of that property,[110] his desire to not sell that property,[111] his feelings regarding that property,[112] and his knowledge of the Hanson Spur and history of communications with Sandersville Railroad.[113]

---

[102] *Id*. at p. 2, l. 24 to p. 3, l. 11, p. 3, ll. 14-19.
[103] *Id*. at p. 3, ll. 12-13, p. 8, ll. 13-18.
[104] *Id*. at p. 3 to p. 6, l. 23, p. 7, ll. 3-5, p. 7, l. 18 to p. 8, l. 6.
[105] *Id*. at p. 6, l. 24 to p. 7, l. 2.
[106] *Id*. at p. 7, ll. 6-17, p. 8, ll. 7-12.
[107] See id.
[108] Pre-Filed Responsive Testimony of Marvin Smith, Jr., *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205542 (Aug. 25, 2023).
[109] *Id*. at p. 7, l. 8 to p. 3, l. 10.
[110] *Id*. at p. 3, ll. 11-17, p. 3, l. 22 to p. 4, l. 2.
[111] *Id*. at p. 3, ll. 20-21, p. 8, ll. 9-16.
[112] *Id*. at p. 4, ll. 3-7.
[113] *Id*. at p. 4, l. 8 to p. 7, l. 2, p. 7, l. 17 to p. 8, l. 1.

Mr. Smith also testifies regarding his opinion as to the effect that the Hanson Spur will have on his property and life.[114] Finally, Mr. Smith testifies as to his belief as to whether the Hanson Spur will harm or benefit "the Sparta Community."[115] None of this testimony addresses whether the Hanson Spur will be a public use on the Project Parcels at issue. Therefore, the testimony of Mr. Smith is not relevant and should not be admitted in these proceedings.

(6) William Blaine Smith (a Respondent)

Throughout his responsive, pre-filed testimony, Mr. William Blaine Smith addresses a host of issues but never discusses the sole issue in this matter: whether the Hanson Spur will serve a public use.[116] Rather than addressing that crucial issue, Mr. Smith's testimony discusses his, his wife's, and his family's ownership history of the parent tracts of Project Parcels 8, 10, and 11,[117] his feelings regarding that property and his and his wife's desire not to sell that property,[118] his current and anticipated uses of the parent tracts of those project parcels,[119] and his knowledge of the Hanson Spur and history of communicating with Sandersville Railroad.[120]

Mr. Smith also testifies improperly regarding his belief of whether or not Sandersville Railroad has the right to exercise eminent domain to acquire property for

---

[114] *Id*. at p. 7, ll. 3-16.
[115] *Id*. at p. 8, ll. 2-8.
[116] Pre-Filed Responsive Testimony of William Blaine Smith, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205545 (Aug. 25, 2023).
[117] *Id*. at p. 2, ll. 6-9, p. 2, ll. 14 to p. 4, l. 20, p. 6, l. 21 to p. 7, l. 4.
[118] *Id*. at p. 2, l. 9, p. 6, ll. 3-4, p. 6, ll. 11-20, p. 13, ll. 4-12.
[119] *Id*. at p. 4, l. 21 to p. 6, l. 2, p. 6, ll. 5-10.
[120] *Id*. at p. 7, l. 5 to p. 9, l. 24, p. 11, l. 4 to p. 12, l. 21.

the Hanson Spur.[121] Mr. Smith further testifies regarding his belief of what effect the Hanson Spur will have on his property and his life[122] as well as whether the Hanson Spur will benefit the "the Sparta Community", an undefined subset of the public at large.[123] Mr. Smith's testimony does not address, in any instance, whether the Hanson Spur will serve a public use on the Project Parcels at issue in this proceeding. Therefore, Mr. Smith's testimony is not relevant and should not be admitted.

(7) Sally G. Wells (a Respondent)[124]

Like the other Respondent witnesses, Ms. Wells does not testify regarding the sole issue in this matter: whether the Hanson Spur will serve a public use. Rather, Ms. Wells testifies regarding her, her siblings', and her family's ownership history of the parent tract of Project Parcel 14,[125] her current and intended future uses of that property,[126] her desire not to sell that property,[127] her feelings regarding that property,[128] and her knowledge of the Hanson Spur and history of communications with the Sandersville Railroad.[129] Ms. Wells also testifies regarding the effect she believes the Hanson Spur will have on her life and property.[130] Finally, Ms. Wells testifies as to her opinion as to whether the Hanson Spur will best serve the public.[131]

---

[121] *Id*. at p. 2, 9-10.
[122] *Id*. at p. 10, l. 1 to p. 11, l. 3.
[123] *Id*. at p. 12, l. 22 to p. 13, l. 3.
[124] Pre-Filed Responsive Testimony of Sally G. Wells, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205549 (Aug. 25, 2023).
[125] P. 2, ll. 7-12, p. 2, l. 15p. 3, l. 4.
[126] *Id*. p. 3, l. 5 to p. 4, l. 5, p. 4, ll. 8-14.
[127] *Id*. p. 4, ll. 6-7, p. 10, ll. 6-10.
[128] *Id*. p. 4, ll. 15-21.
[129] *Id*. p. 4, l. 22 to p. 7, l. 16, p. 8, l. 9 to p. 9, l. 23.
[130] *Id*. p. 7, l. 17 to p. 8, l. 8.
[131] *Id*. p. 9, l. 24 to p. 10, l. 5.

As with the responsive testimony of the other testifying Respondents, none of Ms. Wells testimony is relevant to whether the Hanson Spur will serve a public use. Therefore, none of Ms. Wells' testimony is relevant and it should not be admitted.

(vii) Intervenors' Testimony

Much of the intervenors' testimony focuses on the effects of the Hanson Spur on properties that are not Project Parcels. As the Supreme Court of Georgia has made clear, the "**review [in a railroad condemnation matter before the Commission] is intended to provide scrutiny as to the public or private nature of the use of the land involved.**"[132] Additionally, the review is intended to address "whether the condemnation serves a public purpose [*i.e.*, use], **not whether the condemnation 'best serves' the public interest.**"[133] For this reason, testimony of the Intervenors regarding the alleged or perceived effects that the Hanson Spur will have on properties that are not Project Parcels is not relevant and should not be admitted, just like testimony regarding the alleged or perceived effects that the Hanson Spur will have on the parent tracts of Project Parcels. These comments should not be admitted. The intervenors can address these matters in public comment but they should not be admitted on the record.

---

[132] *Central of Georgia Railroad v. Georgia Public Service Commission*, 257 Ga. at 219, 356 S.E.2 at 866 (emphasis added).
[133] *Id.* (emphasis added).

(1) Melanie Benson (an Intervenor)

The pre-filed "[Rebuttal] Testimony of Melanie Benson"[134] addresses her perceived or alleged effects that the Hanson Spur will have on her property and her "community," which is a subset of the public at large.[135] This testimony has nothing to do with the test in this matter of whether the Hanson Spur will serve a public use. Further, it does not address the Project Parcels at issue. Therefore, under the Supreme Court of Georgia's test set out in *Central of Georgia Railroad*, the testimony of Ms. Benson is not relevant and should not be admitted.

(2) Bennie Clayton (an Intervenor)

The pre-filed "[Rebuttal] Testimony of Bennie Clayton,"[136] likewise addresses his perceived or alleged effects that the Hanson Spur will have on his parcel, which is not a Project Parcel, and his "community." Thus, the testimony does not address the public or private use of the Hanson Spur with respect to the Project Parcels at issue in his proceeding. As a result, Mr. Clayton's testimony is not relevant and should not be admitted.

---

[134] Direct Testimony [sic] of Conner Bailey, Bennie Clayton, Commissioner Randolph Clayton, Elizabeth Scott, Janet Smith, Kenneth Clayton, Mark Smith, [and] Melanie Benson, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205553, "Direct Testimony of Melanie Benson" (Aug. 28, 2023).

[135] *See generally id*.

[136] Direct Testimony [sic] of Conner Bailey, Bennie Clayton, Commissioner Randolph Clayton, Elizabeth Scott, Janet Smith, Kenneth Clayton, Mark Smith, [and] Melanie Benson, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205553, "Direct Testimony of Bennie Clayton" (Aug. 28, 2023).

(3) Kenneth Clayton (an Intervenor)

The pre-filed "[Rebuttal] Testimony of Kenneth Clayton,"[137] likewise addresses the perceived or alleged effects that the Hanson Spur will have on his parcel, which is not a project Parcel, and his "community." The testimony therefore does not address the public or private use of the Hanson Spur with respect to the Project Parcels at issue in this proceeding. Consequently, the testimony of Mr. Clayton is not relevant and should not be admitted.

(4) Randolph Clayton (an Intervenor).

The pre-filed "[Responsive] Testimony of Randolph Clayton"[138] addresses the subset of the public that lives or owns property near the Hanson Spur. His opinions regarding the effect of the Hanson Spur on his district are not relevant to the public or private use of the Hanson Spur because they do not address whether the Hanson Spur will serve a public use on the Project Parcels at issue in this matter, instead they appear to address whether the Hanson Spur, in his opinion, will "best serve" the public interest. For these reasons, Mr. Clayton's testimony should not be admitted.

---

[137] Direct Testimony [sic] of Conner Bailey, Bennie Clayton, Commissioner Randolph Clayton, Elizabeth Scott, Janet Smith, Kenneth Clayton, Mark Smith, [and] Melanie Benson, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205553, "Direct Testimony of Kenneth Clayton" (Aug. 28, 2023).

[138] Direct Testimony [sic] of Conner Bailey, Bennie Clayton, Commissioner Randolph Clayton, Elizabeth Scott, Janet Smith, Kenneth Clayton, Mark Smith, [and] Melanie Benson, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205553, "Direct Testimony of Randolph Clayton" (Aug. 28, 2023).

(5) Elizabeth Scott (an Intervenor)

The pre-filed "[Rebuttal] Testimony of Elizabeth Scott,"[139] addresses her perceived or alleged effects that the Hanson Spur will have on her parcel, which also is not a project Parcel, and her "community." Consequently, her testimony therefore does not address the public or private use of the Hanson Spur with respect to the Project Parcels at issue in this proceeding. Thus, the testimony of Ms. Scott is not relevant and should not be admitted.

(6) David Mark Smith (an Intervenor)

The pre-filed "[Rebuttal] Testimony of David Mark Smith,"[140] addresses Mr. Smith's opinion of the Hanson Spur as well as the ownership history of, and his feelings regarding, his property, which is not a Project Parcel.[141] For instance, Mr. Smith discusses the purported historic nature of a church that is located in the same general area of Hancock County as the Hanson Spur but that is not on a Project Parcel or even a parent tract of a Project Parcel.[142] Mr. Smith also discusses his knowledge of the Hanson Spur and communications with the Sandersville Railroad regarding the Hanson Spur.[143] Mr. Smith then addresses his opinion of the effect the Hanson Spur

---

[139] Direct Testimony [sic] of Conner Bailey, Bennie Clayton, Commissioner Randolph Clayton, Elizabeth Scott, Janet Smith, Kenneth Clayton, Mark Smith, [and] Melanie Benson, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205553, "Direct Testimony of Elizabeth Scott" (Aug. 28, 2023).
[140] Direct Testimony [sic] of Conner Bailey, Bennie Clayton, Commissioner Randolph Clayton, Elizabeth Scott, Janet Smith, Kenneth Clayton, Mark Smith, [and] Melanie Benson, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205553, "Direct Testimony of David Mark Smith" (Aug. 28, 2023).
[141] *See generally id.*
[142] *Id.* at p. 4, ll. 15-18.
[143] *Id.* at p. 4, l. 19 to p. 6, l. 5.

will have on his property and his "community", which apparently is a small part of Hancock County and the public at large.[144] Finally, Mr. Smith discusses his grievances with the quarry and Pittman Construction's Sparta asphalt plant.[145] This testimony is not relevant to whether or not the Hanson Spur will serve a public purpose on the Project Parcels at issue in this proceeding. In fact, it never addresses the Hanson Spur and its public use of providing channels of trade. The testimony merely addresses the fact that Mr. Smith does not like the public use of the Hanson Spur or its customers. Therefore, Mr. Smith's testimony is not relevant and should not be admitted.

(7) Janet Paige Smith (an Intervenor)

The pre-filed "[Rebuttal] Testimony of Janet Smith",[146] like the other intervenors, does not address whether the Hanson Spur will serve a public purpose.[147] Instead, Ms. Smith discusses, in her pre-filed testimony, her history with respect to a parcel that she owns, but that is not a Project Parcel and is not the subject of this proceeding, and the area or "community" near her property[148] as well as her opposition to, and efforts to oppose, the Hanson Spur.[149] Ms. Smith also discusses her prior communications with the Sandersville Railroad.[150] Finally, Ms. Smith gives her opinion

---

[144] *Id*. at p. 6, l. 16 to p. 7, l. 10.
[145] *Id*. at p. 7, l. 15 to p. 8, l. 2.
[146] Direct Testimony [sic] of Conner Bailey, Bennie Clayton, Commissioner Randolph Clayton, Elizabeth Scott, Janet Smith, Kenneth Clayton, Mark Smith, [and] Melanie Benson, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205553, "Direct Testimony of Janet Paige Smith" (Aug. 28, 2023).
[147] *See generally id*.
[148] *Id*. at p. 2, l. 12 to p. 3, l. 18, p. p. 6, ll. 4-6.
[149] *Id*. at p. 3, l. 19 to p. 5, l. 13, p. 7, ll. 4-17, p. 8, ll. 1-17.
[150] *Id*. at p. 5, l. 14 to p. 6, l. 3.

on the effects she perceives that the Hanson Spur will have on her "neighborhood."[151] As with the testimony of the other Intervenors, Ms. Smith's testimony does not address whether the Hanson Spur will serve a public use on the Project Parcels at issue in this matter; instead, Ms. Smith's testimony addresses her opinion as to whether the Hanson Spur will best serve a public purpose. That testimony is not relevant. Thus, Ms. Smith's testimony is not relevant and should not be admitted.

(C) Reservation of Right to Supplement Testimony

Some of the purported experts in this matter have attempted to reserve the right to supplement their testimony.[152] That is contrary to the Procedural and Scheduling Order in this matter which set forth the dates on which the Parties must file various forms of pre-filed testimony. With the exception of standard errata filings, any reservation of the right to supplement pre-filed testimony should be rejected. Additionally, any attempt to supplement testimony, at the hearing or in writing, should be summarily rejected by the Hearing Officer.

(III) Conclusion

Based on the above, the testimony of the Respondents, the Riverkeeper, and the Intervenors should not be admitted, as described and briefed above. Those parties to this proceeding may argue for the Commission to take a different approach to the evaluation of a railroad condemnation matter. But, that is not the approach that the

---

[151] *Id.* at p. 6, l. 11 to p. 7, l. 3.
[152] *E.g.*, Pre-Filed Responsive [] Testimony of Donald J. Kochan, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205548, at p. 26, l. 5 to p. 28, l. 5 (Aug. 25, 2023).

Georgia Supreme Court has announced for these matters. Only testimony relevant to the test set out in *Central of Georgia Railroad v. Georgia Public Service Commission*[153] is relevant in this proceeding. Namely, all admissible testimony should address the purpose of this proceeding: "**the review is intended to provide scrutiny as to the public or private nature of the use of the land involved**" not whether the Hanson Spur will best serve the public interest, which is topic that most of the testimony submitted by the Respondents, the Riverkeeper, and the Intervenors addresses.[154]

[SIGNATURES ON NEXT PAGE]

[153] 257 Ga. 217, 356 S.E.2d 865 (1987).
[154] *Id*. at 219, 356 S.E.2d at 866 (emphasis added).

This 16th day of October 2023.



L. Craig Dowdy
Georgia Bar No. 227810
Steven L. Jones
Georgia Bar No. 639038

TAYLOR ENGLISH DUMA LLP
1600 Parkwood Circle Suite 200
Atlanta, Georgia 30339
Telephone: (770) 434-6868
Facsimile: (770) 434-7376
cdowdy@taylorenglish.com
sjones@taylorenglish.com

/s/ Robert S. Highsmith Jr.

Robert S. Highsmith Jr.
Georgia Bar No. 352777
Laura E. Flint
Georgia Bar No. 635203

HOLLAND & KNIGHT LLP
1180 West Peachtree Street NW
Suite 1800
Atlanta, Georgia 30309
Telephone: (404) 817-8500
Facsimile: (404) 881-0470
robert.highsmith@hklaw.com
laura.flint@hklaw.com

Counsel for Petitioner
Sandersville Railroad Company

BEFORE THE

GEORGIA PUBLIC SERVICE COMMISSION

In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition	**Docket No.: 45045**

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing **Sandersville Railroad Company's Objections to Pre-Filed Responsive Testimony** upon the following persons by causing electronic copies of the same to be transmitted to each party that has supplied a valid email address and upon all other parties via first class mail with adequate postage affixed thereon and deposited in the United States Mail addressed as follows:

Sallie Tanner
Executive Secretary
Georgia Public Service Comm.
244 Washington Street, SW
Atlanta, GA 30334
stanner@psc.state.ga.us

Rob Trokey
Director, Electric Unit
Georgia Public Service Comm.
244 Washington Street, SW
Atlanta, GA 30334
rtrokey@psc.state.ga.us

Nancy G. Gibson
Georgia Public Service Comm.
244 Washington Street, SW
Atlanta, GA 30334
ngibson@psc.state.ga.us

Jamie Rush
Malissa Williams
Miriam Gutman
The Southern Poverty Law Center
150 E. Ponce de Leon Avenue
Suite 340
Decatur, Georgia 30030
jamie.rush@splcenter.org
malissa.williams@splcenter.org
miriam.gutman@splcenter.org

Robert B. Baker
Robert B. Baker, PC
2480 Briarcliff Road, NE
Suite 6
Atlanta, Georgia 30329
bobby@robertbbaker.com

Don and Sally Garrett
1335 Shoals Road
Sparta, Georgia 31087
sallygarrett45@yahoo.com

Blaine and Diane Smith
823 Chatsworth Drive
Accokeek, MD 20607
Wbs10408@aol.com
hdianesmith@gmail.com

Marvin and Pat Smith
15500 Avery Road
Rockville, MD 20855
marvin.smithjr@yahoo.com
pjsmax@hotmail.com

Thomas Ahmad Lee
821 Brookriver Drive, Suite 246
Dallas, Texas 75247
tlee1827@yahoo.com

Joel Reed
Kathy Reed
5 Dogwood Lane
Chatsworth, Georgia 30705
Jbreed48@yahoo.com

No Railroad in Our Community Coalition
c/o Janet P. Smith and David Mark Smith
929 Shoals Road
Sparta, Georgia 31087

Grant E. McBride
Smith Welch Webb & White
2200 Keys Ferry Court
McDonogh, GA 30523
gmcbride@smithwelchlaw.com

William R. Maurer
Institute for Justice
600 University Street
Suite 1730
Seattle, WA 98101
wmaurer@ij.org

Sally G. Wells
140 Dunn Road
Sparta, Georgia 31087
sllywells@yahoo.com

Herus Ellison Garrett
111 Brookwood Court
Eatonton, Georgia 31024

Elizabeth L. Sanz
Renee D. Flaherty
Institute for Justice
901 N. Glebe Road
Suite 900
Arlington, Virginia 22203
bsanz@ij.org
rflaherty@ij.org

Verne Kennedy Hollis
373 Hamilton St.
Sparta, Georgia 31087
vkenn41@yahoo.com

Leo Briggs
Georgia Briggs
4500 Hidden Stream Drive
Loganville, Georgia 30052
lgbriggs@earthlink.net

Donna N. Garrett
154 Lakeview Drive
Sparta, Georgia 31087
ngarrett64@yahoo.com

This 16th day of October 2023.



L. Craig Dowdy
Georgia Bar No. 227810